IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.715 OF 1982

THE HON'BLE MR. JUSTICE Y.B. BHATT:

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1. Whether Reporters of Local Papers may be allowed to see the judgement?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Appearance:

Mr. J.L. Ramnani, advocate for the petitioners.
M/s. D.V. Kahandekar & K.S. Parikh for respondent.

CORAM: Y.B. BHATT J.
Date of Decision: 12-12-1995

JUDGEMENT

1. The present revision is one under section 29(2) of the Bombay Rent Act (hereinafter referred to as 'the said Act'), wherein the petitioners are the original defendant nos.2 and 3 respectively (sub-tenants), and the opponent is the original plaintiff-landlord.

2. Before proceeding with the contentions raised in the present revision, it must be kept in mind that the present revision is one under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In the context of the powers of the High Court exercisable in such revisions, the ratio laid down by the Supreme court in the case of Helper Girdharbhai (AIR 1987 SC 1782) is most relevant. In the said decision the Supreme Court has observed in substance that in exercising revisional power under section 29(2) the High Court must ensure that the principles of law have been correctly borne in mind by the lower court. Secondly, the facts have been properly appreciated and a decision arrived at taking all material and relevant facts in mind. In order to warrant interference, the decision must be such a decision which no reasonable man could have arrived at. Lastly, such a decision does not lead to a miscarriage of justice. But, in the guise of revision, substitution of one view where two views are possible and the Court of Small Causes has taken a particular view, is not permissible. If a possible view has been taken, the High Court would be exceeding its jurisdiction if it substitutes its own view in place of that of the courts below because it considers it to be a better view. The fact that the High Court would have taken a different view is wholly irrelevant.

2.1 It must also be noted that in the case before the Supreme Court, the findings of the trial court were reversed in appeal, and it was the appellate decision which was before the High Court. The High Court in the revision under section 29(2) reversed the finding. Thus, in the revision before the High Court, it was not a case of concurrent findings of fact.

2.2 It is also pertinent to note that in order to succeed in the present revision, against the concurrent findings of fact and concurring judgements of the two courts below, the petitioners would be required to establish that the appreciation of evidence on the part of the appellate court, is such as would amount to a perversity in law or the appreciation is such where no reasonable and prudent person could have arrived at the findings in fact recorded. It is on this perspective that this court is required to examine the judgement and decree of the appellate court, confirming the decree of eviction passed against the tenant and the sub-tenants.

3. In the first instance it is required to be noted that the landlord has filed a suit against three defendants, wherein the first defendant was one Kashiram Kevalram Raval, who was the original tenant. Defendant nos.2 and 3 in the suit (present petitioners) sere alleged to be illegal sub-tenants of the first defendant.

4. The landlord had filed a suit for eviction against the aforesaid three defendants on the ground that the first defendant has ceased to use the premises for the purpose for which they were let without reasonable cause for six months immediately preceding the date of the suit, that the first defendant tenant is in arrears of rent for more than six months, and has neglected to pay the same, that the first defendant-tenant has illegally transferred the possession of the suit premises to defendant nos.2 and 3, and that the landlord reasonably and bonafide required the suit premises for her own residence.

5. It may, however, be noted that so far as the landlord's claim stated in the plaint as regards reasonable and bonafide requirement is concerned, the same does not appear to have been pressed inasmuch as no issue has been raised by the trial court in this regard and consequently no findings have been recorded on the said issue.

6. The three defendants filed a joint written statement at Exh.16, wherein they disputed all the averments made in the plaint. Defendant nos.2 and 3 further contended that they were and are ready and willing to pay the rent and that they are depositing the arrears of rent in court.

7. The trial court, after raising the necessary issues and recording the evidence led by the parties, passed a decree for eviction against all the three defendants, on the ground of non-user on the part of the first defendant-original tenant, and on the ground of illegal subletting by the first defendant in favour of the defendant nos.2 and 3.

8. Being aggrieved by the said decree for eviction, defendant nos.2 and 3 preferred an appeal under section 29(1) of the Rent Act. It is pertinent to note at this stage that the said appeal was filed only by the original defendant nos.2 and 3 i.e. the subtenants, wherein original defendant no.1 i.e. the tenant was made a respondent. The defendant no.1 (tenant) had neither preferred any independent appeal nor supported defendant nos.2 and 3 in their appeal. Even in the present revision, the defendant no.1 tenant is not made a party at all. Thus, defendant no.1 tenant has accepted the decree of eviction passed against him by the trial court. Defendant nos.2 and 3 claimed to have acquired the running business of defendant no.1, and claimed only that they are legal transferees. However, if a decree of eviction passed against the tenant is not challenged by the tenant, it is highly doubtful that those claiming under, or through the tenant would be entitled to challenge the same. The present revision, therefore, filed by original defendant nos.2 and 3

is liable to be rejected on this ground alone. However, I do not propose to dismiss the revision only on this ground.

9. The lower appellate court raised the necessary points for determination, and these points for determination have been specifically stated to have been raised from the submissions made by the learned advocates. Again, it is pertinent to note that the appellate court has not raised an issue or a point for determination in respect of the arrears or rent, and the decree for eviction, having been passed on that ground. It, therefore, appears that that part of the decree which is based on a finding that the first defendant was in arrears of rent for more than six months and is not ready and willing to pay the same was not challenged in appeal. Thus, the decree of the trial court is sustainable on this ground alone. Furthermore, no contention or ground has been raised in the memo of the present revision that this question ought to have been considered by the lower appellate court, or that the same was urged, but has not been considered. In the premises aforesaid, the decree of the trial court, on the ground of arrears of rent, as confirmed by the lower appellate court (not having been challenged in appeal) is required to be sustained even in the present revision.

10. I may, however, consider the other grounds on which the two courts below have passed the decree for eviction viz., on the ground of non-user for a continuous period of six months prior to the filing of the suit, and illegal subletting on the part of the first defendant in favour of the defendant nos.2 and 3. I do not propose to discuss in detail once again the appreciation of evidence on the part of the lower appellate court, merely to demonstrate that such appreciation is both reasonable and justified. On a totality of the evidence on record and in view of the treatment meted out by the appellate court, it cannot be possibly be suggested, let alone be established, that such appreciation would amount to a perversity in law or that no reasonable and prudent person could have arrived at such a conclusion.

11. The appellate court was amply justified in coming to the conclusion that the evidence of the plaintiff herself at Exh.55, her witness Laxmikant Gajanan and another witness Rohitlal Himmatlal Exh.82, clearly establish that the first defendant left the suit premises and shifted his business to his native place at Patan 2-3 years prior to his deposition, and that the said witness Laxmikant Gajanan had in fact gone to Patan on official work and had in fact met the first defendant at Patan in the year 1969.

12. As against this the defendant-tenant did not directly

dispute the assertion that he had left the suit premises more than six months prior to the date of the suit. His only defence in this regard is that he had sold the suit shop together with goodwill in favour of defendant nos.2 and 3, that the sale of such goodwill of the suit shop as a going concern was for legal consideration by virtue of registered sale deed Ex.72.

13. The lower appellate court as also the trial court have after examining the evidence on record, recorded concurrent findings of fact that the sale deed Exh.72, which purports to be the transfer of the suit shop together with goodwill in favour of the defendant nos.2 and 3, is sham and bogus, and that the same has been executed merely with a view to attempt to legalise the transaction. In this context I may note that the findings of fact recorded by the two courts below cannot be assailed and are required to be sustained.

14. It is, however, pertinent to note another salient feature of this transaction which has not been noted by the courts below. The landlord-plaintiff has sought a decree for eviction against the first defendant as a tenant, on the specific plea that it was the first defendant as an individual who was the tenant of the suit premises. This assertion is not denied by the first defendant. In other words, it is neither the case of the plaintiff nor the case of the first defendant that the tenancy was in the name of the shop, or that it was in the name of a proprietary firm and/or a partnership firm. In other words, if the tenancy was in the name of the first defendant as an individual, merely on account of the fact that he was using the premises for running the shop, and assuming that he sold the shop as a going concern, would not confer any legal status to the purchaser of such business, unless the transfer of tenancy was permitted by the landlord. It is not the case of any of the defendants that such transfer of tenancy was permitted by the landlord. In any case, on the admitted facts it is apparent that the tenancy was transferred in favour of defendant nos.2 and 3 by defendant no.1. Such transfer of tenancy would be an illegal transfer, unless the landlord permitted it, or unless the terms of the tenancy permitted such transfer. Obviously the two conditions are not met. Thus, whether the first defendant sold his shop as a going concern by way of a legitimate transfer of business or otherwise is a redundant issue. What matters is that along with the business he transferred the tenancy rights, and it is specifically this transfer of tenancy rights which constitutes illegal subletting.

15. Thus, on a total consideration of the impugned judgement and decree, and having appreciated the same in the context of the evidence on record, I am of the opinion that

the same requires to be sustained.

16. This revision is, therefore, dismissed. Rule is discharged with costs. Ad interim relief vacated.

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